IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CAROL L. SWANTON, Respondent, v. EVELYNE BRIGEOIS-ASHTON, Personal Representative of the ESTATE OF DENIS ASHTON, deceased, Appellant.	)	No. 57075-7-I **DIVISION ONE** UNPUBLISHED OPINION FILED: September 18, 2006

Per Curiam. In 1988, Carol Swanton loaned Denis Ashton $20,000. In emails sent to Swanton in 2003 and 2004, Ashton acknowledged the debt and agreed to pay the outstanding balance. But Ashton died before he could make the final payment. Because the admission of Ashton's emails is not precluded by RCW 5.60.030, the deadman's statute, and there is no material factual dispute that the emails established an account stated, the trial court properly entered summary judgment against Ashton's Estate for the balance due on the loan. Accordingly, we affirm.

FACTS

Respondent Carol Swanton met Denis Ashton in 1973. In about 1976, Ashton started a computer software business, Leland Associates, Inc., and Swanton became one of Ashton's first employees. At some point during the mid-1990s, Leland Associates, Inc., was administratively dissolved, but Ashton continued to operate the business under the name Leland Associates.

In 1988, according to respondent Swanton, Swanton loaned Ashton $20,000. Swanton did not ask Ashton to sign any loan documents. At about the same time, Ashton also borrowed $30,000 from Swanton's brother, a transaction documented by a signed promissory note dated January 15, 1988. Ashton made some payments to Swanton's brother, but Swanton eventually paid off the loan to her brother and received an assignment of the debt. Swanton resigned from Ashton's company in 1997.

In an email to Swanton dated July 20, 2003, Ashton summarized the payments made on the loan and calculated the outstanding balance as $42,781.45. He then indicated that he had prepared a check to Swanton for $22,000, a check that Swanton received several days later.

On June 30, 2004, Swanton emailed Ashton and asked for a final payment of $22,858.50. In his reply, Ashton stated "I will have a final check to you early next week." Ashton died on August 4, 2004, without making any

further payment.

Swanton filed a claim with Ashton's Estate for $23,384.56 for "a personal loan acknowledged by the deceased the week before his death." After the Estate denied Swanton's claim, Swanton timely filed this action for money owed against Evelyne Brigeois-Ashton, the deceased's wife and personal representative of the Estate, alleging that Ashton's emails acknowledging the debt constituted an account stated.

Swanton eventually moved for summary judgment, arguing that the emails from Ashton, in which he acknowledged the existence of the debt and the balance due, and promised to pay, constituted an account stated as a matter of law. The trial court granted Swanton's motion and entered judgment for $20,781.45 plus interest.

STANDARD OF REVIEW

When reviewing a grant of summary judgment, this court undertakes the same inquiry as the trial court. See Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). We consider the evidence and the reasonable inferences therefrom in the light most favorable to the nonmoving party. Schaaf v. Highfield, 127 Wn.2d 17, 21, 896 P.2d 665 (1995). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a

judgment as a matter of law." CR 56(c); White v. State, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).

DECISION

Brigeois-Ashton first contends that Ashton's emails and Swanton's declaration that she received the emails are inadmissible under RCW 5.60.030, the deadman's statute. Because the emails are not admissible, Brigeois-Ashton maintains that Swanton cannot establish the existence of the alleged loan transaction and is therefore not entitled to summary judgment.

In any action against the representative of a deceased person, RCW 5.60.030 precludes testimony by a party in interest about transactions with—or statements made by—the deceased.[1] In re Estate of Krappes, 121 Wn. App. 653, 666, 91 P.3d 96 (2004). The purpose of the statute is to prevent interested parties from giving self-serving testimony about conversations or transactions with the deceased. O'Connor v. Slatter, 48 Wash. 493, 495, 93 P. 1078 (1908). "The test of a transaction with a decedent is whether the decedent, if living, could contradict the witness of his own knowledge." Wildman v. Taylor, 46 Wn. App. 546, 549, 731 P.2d 541 (1987).

But RCW 5.60.030 excludes only testimony by an interested party as to transactions with or statements made by the deceased. Wildman, 46 Wn. App. at 550. It is well established that the deadman's statute does not bar

[1] RCW 5.60.030 provides: "[I]n an action . . . where the adverse party sues or defends as executor, administrator or legal representative of any deceased person, . . . then a party in interest or to the record, shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased."

documentary evidence. See Erickson v. Kerr, 125 Wn.2d 183, 188, 883 P.2d 313 (1994). Under the Rules of Evidence, an email constitutes a "writing," and a printout of an email is considered an "original." ER 1001(a), (c). Consequently, the admission of printouts of Ashton's emails is not precluded by RCW 5.60.030. Although Swanton may not testify about the terms of the transaction itself, the deadman's statute does not prevent her from testifying about her receipt of the emails. See Wildman, 46 Wn. App. at 553 (deadman's statute did not preclude interested party from testifying about receipt of letter from deceased and identifying the deceased's signature).

Brigeois-Ashton maintains that the "critical requirement" for the documentary exception to the deadman's statute "is that the writing must be executed" and that Ashton's emails do not fall within the exception because they were not executed. But she cites no relevant authority to support this conclusory assertion. Brigeois-Ashton correctly notes that both Slavin v. Ackman, 119 Wash. 48, 204 P. 816 (1922), and Wildman v. Taylor, 46 Wn. App. 546, 731 P.2d 541 (1987), "involve signed documents." Neither case, however, supports the proposition that documents must be executed in order to avoid application of the deadman's statute. Our Supreme Court has expressly noted the rule in Washington has long been that "the deadman's statute does not apply to documents written or executed by the deceased." (Emphasis added.) Erickson, 125 Wn.2d at 188.

Finally, Brigeois-Ashton suggests, with no supporting legal argument or citation to relevant authority, that Ashton's emails were not admissible because they were not properly authenticated. Under ER 901(a), the authentication requirement "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." In her supporting declaration, Swanton identified the emails as those that she had received on her computer from Ashton. The record before the trial court also included corroborating evidence documenting the payments that Ashton referred to in the July 20, 2003, email. These circumstances, which were uncontroverted, were sufficient to establish the authenticity of the emails. The trial court did not err in considering Ashton's emails when entering summary judgment.

Brigeois-Ashton next contends that even if Ashton's emails are admissible, they do not constitute an account stated. An account stated is "'a manifestation of assent by debtor and creditor to a stated sum as an accurate computation of an amount due the creditor.'" Sunnyside Valley Irrig. Dist. v. Roza Irrig. Dist., 124 Wn.2d 312, 315, 877 P.2d 1283 (1994) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 282(1) (1981)). The rule governing account stated in Washington has been summarized as follows:

> To impart to an account the character of an account stated it must be mutually agreed between the parties that the balance struck thereon is the correct amount due from the one party to the other on the final adjustment of their mutual dealings to which the account relates. The mere rendition of an account by one party to another does not show an account stated. There must be some

> form of assent to the account, that is, a definite acknowledgment of an indebtedness in a certain sum. . . . True, assent may be implied from the circumstances and acts of the parties, but it must appear in some form.

(Emphasis omitted.) Sunnyside, 124 Wn.2d at 315-16 (quoting Shaw v. Lobe, 58 Wash. 219, 221, 108 P. 450 (1910)).

In his email to Swanton dated July 20, 2003, Ashton wrote:

> My records show a payment of $26,630 on 29 April 2001. That payment took the form of $23,690 in cash and value received in the form of two oriental carpets valued at $3000. That payment retired the principal. You had calculated interest owing thru that date of $52,899.24. I paid $20,000 on account 16 Mar 2002. Accrued interest for approximately 11 months – from April 2001 thru March 2002 – on $52,899.24 I make out to be $4849.10, for a total of $57,748.34. After the payment of 16 Mar 2002, that was reduced to $37,748.34. Accrued interest from that date to the present amounts to about $5033.11, for a total of $42,781.45. I have prepared a check in the amount of $22,000.00. Shall I send it to your home address?

In the email, Ashton precisely summarized the relevant details of the loan, including the payments made to date and the balance due. In support of summary judgment, Swanton submitted evidence corroborating the payments identified by Ashton, including the check for $22,000 that she received shortly after the email. Based on Ashton's own calculations, the outstanding balance after the $22,000 payment was $20,781.45, the precise amount awarded by the trial court.

Approximately one year later, on June 30, 2004, Swanton sent an email to Ashton requesting a final payment totaling $22,858.50. In his reply, in addition

to responding to personal matters mentioned in Swanton's email, Ashton stated that "I will have a final check to you early next week."

Even viewed in the light most favorable to Brigeois-Ashton, Ashton's emails include a definite acknowledgement of the debt to Swanton, a precise calculation of the outstanding balance, and an agreement to pay the balance. These circumstances satisfied all of the requirements for an account stated. See Sunnyside, 124 Wn.2d at 315-16. Brigeois-Ashton suggests that Ashton may not have intended to pay back the full amount of the debt. But nothing in the record before the trial court, including Ashton's emails, supports an inference that he objected to any aspect of the calculations or that he intended to negotiate the amount of the final payment. Although the mere fact that Ashton made payments to Swanton does not establish an account stated as a matter of law, "payment, together with a failure to objectively manifest either protest or an intent to negotiate the sum at some future time, does establish an account stated." Sunnyside, 124 Wn.2d at 316-17 n.1.

Brigeois-Ashton maintains there are other issues of material fact that preclude summary judgment on the theory of account stated. In particular, she alleges that Swanton was "potentially liable" for the corporate obligation arising out of the loan to Ashton, that the administrative dissolution of Ashton's corporation rendered the debt uncollectible, and that the amount of interest for the loan was miscalculated. But these contentions involve nothing more than

sheer speculation, unsupported by meaningful legal argument or evidence in the record. Once the moving party has met its burden on summary judgment, the nonmoving party may not rely on "conclusory allegations, speculative statements or argumentative assertions." Las v. Yellow Front Stores, Inc., 66 Wn. App. 196, 198, 831 P.2d 744 (1992). "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." Holland v. City of Tacoma, 90 Wn. App. 533, 538, 954 P.2d 290 (1998).

Finally, Brigeois-Ashton contends that even if Ashton's emails were admissible and constituted an account stated, Swanton's claim was unenforceable because it violated the statute of frauds. Although the precise nature of this argument is unclear, Brigeois-Ashton appears to rely on RCW 19.36.110, which provides that a credit agreement "is not enforceable against the creditor unless the agreement is in writing and signed by the creditor." But RCW 19.36.110 does not apply unless the creditor has provided a notice that complies with RCW 19.36.140. See RCW 19.36.130. Because Brigeois-Ashton does not allege or establish that such a notice was given in this case, her argument fails.

The trial court did not err in entering summary judgment on the theory of account stated.

Affirmed.

For the court:

Appelwick, C.J.

Baker, J.

Coleman, J.